

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIRANDA THOMAS,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, *et al.*,

Defendants.

Case No. C17-475-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiff Miranda Thomas’ Motion to Remand. Dkt. # 19. Defendants American Family Mutual Insurance Company, American Family Insurance Company (collectively, “AF”), and AFNI, Inc. (“AFNI”) oppose the Motion. Dkt. ## 23, 26. For the reasons that follow, the Court **GRANTS** Plaintiff’s Motion.

II. BACKGROUND

Plaintiff filed this putative class action against Defendants, alleging violations of the Washington Consumer Protection Act, in King County Superior Court. Dkt. # 1. Plaintiff alleges that Defendants committed “unfair and deceptive acts” while collecting on a debt Plaintiff incurred following a motor vehicle collision with one of AF’s insureds. Plaintiff’s Complaint alleges damages less than \$5 million. Defendants removed the case

1 to this Court under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2)
2 (“CAFA”). Dkt. # 1. Plaintiff then filed this Motion for Remand. Dkt. # 19.

3 III. DISCUSSION

4 Removal jurisdiction is strictly construed in favor of remand, and any doubt as to
5 the right of removal must be resolved in favor of remand. *Harris v. Bankers Life & Cas.*
6 *Co.*, 425 F.3d 689, 698 (9th Cir. 2005). The party seeking a federal forum has the burden
7 of establishing that federal jurisdiction is proper. *Abrego Abrego v. Dow Chem. Co.*, 443
8 F.3d 676, 682-83 (9th Cir. 2006). The removing party must carry this burden not only at
9 the time of removal, but also in opposition to a motion for remand. *See Moore-Thomas v.*
10 *Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009).

11 Pursuant to CAFA, federal courts have jurisdiction over certain class actions,
12 defined in § 1332(d)(1), if the class has more than 100 members, the parties are
13 minimally diverse, and the amount in controversy exceeds \$5 million. 28 U.S.C. §
14 1332(d)(2); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 552, 190
15 L. Ed. 2d 495 (2014). “[A] defendant’s notice of removal need include only a plausible
16 allegation that the amount in controversy exceeds the jurisdictional threshold,’ and need
17 not contain evidentiary submissions.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d
18 1193, 1197 (9th Cir. 2015) (quoting *Dart*, 135 S. Ct. at 554.)

19 In determining the amount in controversy, courts first look to the complaint.
20 *Ibarra*, 775 F.3d at 1197. “Where . . . damages are unstated in a complaint, or, in the
21 defendant’s view are understated, the defendant seeking removal bears the burden to
22 show by a preponderance of the evidence that the aggregate amount in controversy
23 exceeds \$5 million when federal jurisdiction is challenged.” *Id.* This burden remains the
24 same even if the plaintiffs “affirmatively contend in that complaint that damages do not
25 exceed \$5 million.” *Rodriguez v. AT & T Mobility Services LLC*, 728 F.3d 975, 981 (9th
26 Cir. 2013). When plaintiffs affirmatively state that the amount in controversy does not
27 exceed \$5 million, a defendant must show that the “estimate of damages in controversy is

1 a reasonable one.” *Ibarra*, 775 F.3d 1197. Where a defendant’s assertion of the amount
2 in controversy is contested by the plaintiffs, both sides submit proof and the Court must
3 decide, by a preponderance of the evidence, whether the amount-in-controversy
4 requirement has been satisfied. *Dart*, 135 S. Ct. at 554.

5 The parties do not dispute whether this putative class action meets the other
6 requirements of § 1332(d). Plaintiff’s Complaint alleges damages less than \$5 million,
7 thus, Defendants have the burden to establish, by a preponderance of the evidence, that
8 the amount in controversy exceeds the jurisdictional threshold of \$5 million. Plaintiff
9 argues that Defendants have not met that burden, and that removal was improper.

10 Defendants make several assertions regarding the amount of damages in
11 controversy in this claim. First, Defendants asserted in their notice of removal that
12 Plaintiff’s allegations put at least \$10.2 million in dispute. Dkt. # 1. They based this
13 estimate on Plaintiff’s class definition. The Class is defined as follows:

14 All Washington motorists who were in automobile accidents with
15 American Family Mutual Insurance Company insureds, and who, during
16 the period from February 15, 2013 to February 15, 2017, 1) received an
17 initial letter from AFNI, on behalf of American Family Mutual Insurance
18 Company and/or American Family Insurance Company, seeking
19 reimbursement for damage resulting from the accident; and 2) after
20 payment of the claimed amount, received a second letter from AFNI
21 seeking reimbursement for additional or different damage resulting from
22 the same accident.

23 Dkt. # 1 Ex. 1. Defendants determined that AF referred more than 2,400 matters to AFNI
24 involving potential subrogation claims against motorists residing in Washington State
25 during the period at issue. According to their calculations, the total value of these claims
26 was over \$10.2 million. Dkt. # 2. Defendants provided a declaration, but no data or
27 other evidence in support of these assertions. Dkt. # 2.

28 Defendants acknowledge that they did not know at the time of removal how many
of these subrogation matters involved a Washington motorist that received more than one
letter from AFNI seeking reimbursement for damages resulting from the same accident,

1 but AFNI maintains in its Response that the proffered number is an accurate estimate of
2 the damages at issue. AFNI argues that the estimated \$10.2 million includes all of the
3 potential plaintiffs, and that once actual, statutory and treble damages, as well as
4 attorneys' fees are taken into account for "even a fraction of the group", the \$5 million
5 threshold would be met. Dkt. # 23. Dkt. # 1 ¶ 11. AFNI provides no data to support this
6 vague assumption. AFNI refers to data attached to Mr. Karr's declaration, but no such
7 data was submitted to the Court with the declaration. Dkt. # 23 at 6.

8 AF contends that since the notice of removal was filed, AF continued to search for
9 data to support its estimate and now believes that the class of potential plaintiffs
10 described in Plaintiff's Complaint are those uninsured Washington motorists who were
11 involved in accidents that generated different types of damages, i.e., property damages
12 and medical expenses. Dkt. # 26. Based on that belief, AF submits that instead of an
13 estimate based on all subrogation claims against motorists residing in Washington State
14 during the period at issue, the estimate can now be narrowed to the total dollar value of
15 subrogation claims that involved both physical property damage and medical expenses, or
16 \$6,467,795. AF also represents that the submitted data shows that AF was able to
17 recover \$1,999,066 on those specified subrogation claims, minus the additional
18 contingency fees collected by AFNI. Dkt. # 28. AF provided no data regarding the
19 amount of fees that AFNI collected on these claims. AF argues that the total dollar value
20 of the specified subrogation claims, \$6,467,795, is a reasonable estimate for the damages
21 at issue because it represents the amount they believe Plaintiff is seeking in damages: 1)
22 compensatory damages for amounts actually paid to AFNI; and 2) injunctive relief to
23 prevent the collection of amounts yet unpaid. AF argues that this amount combined with
24 Plaintiff's claims for attorneys' fees and treble damages would exceed the jurisdictional
25 threshold.

26 Plaintiff argues that AF's estimate is unreasonable because it does not accurately
27 reflect the Class as defined in the Complaint. Specifically, Plaintiff disputes whether an

1 estimate based on subrogation claims that involved both physical property damage and
2 medical expenses can accurately be equated to those claims that involve motorists that
3 received an initial letter from AFNI seeking reimbursement for damage and then after
4 paying that amount, received a second letter seeking reimbursement for additional or
5 different damage from the same accident. Dkt. # 30 at 6. In making its estimate, AF
6 made an assumption that AFNI could only typically send multiple letters seeking
7 different damages amounts when there are multiple types of damages. AF made this
8 assumption partly because Plaintiff's specific collection requests each covered a different
9 type of damage. The first collection letter Plaintiff received from AFNI sought to recover
10 amounts related to property damage. After Plaintiff paid that amount, she received a
11 second collection request that sought to recover amounts related to the insured's medical
12 expenses. Dkt. # 26 at 9-10. However, AF acknowledges that this assumption is not
13 based on its knowledge of actual correspondence between AFNI and putative class
14 members because they are not in possession of any of that correspondence. *Id.*

15 While it is true that Defendants need not prove that its estimate is accurate to a
16 "legal certainty", they must still show that their estimates are reasonable. AFNI provides
17 no data to support the original estimate of \$10.2 million and instead relies on speculative
18 statements. AFNI's co-defendants, AF, provide data, but do not show by a
19 preponderance of the evidence that its interpretation of that data and the resulting
20 estimate, are reasonable. By AF's own acknowledgement, it based its estimate on all
21 subrogation claims within its initial narrowed grouping of claims that involved multiple
22 types of damages. AF's estimate makes assumptions about AFNI's typical collection
23 practices that are not backed by any evidence. AF only speculates what types of claims
24 *could* lead to AFNI sending multiple collection letters, but AF does not assert that it has
25 any actual knowledge of AFNI's procedures. AF has not shown that its interpretation of
26 the Class and resulting calculations are reasonable. As Defendants have not shown by a
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1 preponderance of the evidence that the amount in controversy exceeds the threshold
2 requirement set out in CAFA¹, Plaintiff's Motion for Remand is **GRANTED**.

3 **IV.CONCLUSION**

4 For the reasons stated above, the Court **GRANTS** Plaintiff's Motion to Remand.
5 Dkt. # 19. The Court hereby **REMANDS** this case to King County Superior Court.

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7 DATED this 20th day of October, 2017.

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11 The Honorable Richard A. Jones
12 United States District Judge
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26 ¹ AFNI argues in its Response that Plaintiff fails to state a claim against it under RCW
27 19.16.250 and WAC 284-30-330 because neither statute applies to AFNI. As Plaintiff's Motion
28 to Remand has been granted, the Court declines to make a judgment as to whether Plaintiff's
Complaint sufficiently states a claim against AFNI.